

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Rules and Calendar Committee

BILL: CS/SCR 1856

INTRODUCER: Rules & Calendar Committee & Senator Pruitt

SUBJECT: Joint Rule 1; Lobbying

DATE: March 6, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Twogood	RC	Fav/CS
2.				
3.				
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Concurrent Resolution 1856 (“the CS”) rescinds former Joint Rule 1 and creates a new Joint Rule One to regulate lobbyist registration and lobbying firm compensation reporting consistent with the requirements of Senate Bill 6-B (2005), the new lobbying law that took effect January 1, 2006. The new Joint Rule *does not* specifically address, interpret, or seek to apply the expenditure ban in s. 11.045(4), F.S. (see, *infra* “VII. Related Issues”).

The new Joint Rule abolishes the existing system of expenditure reporting by lobbyists and replaces it with a system of compensation reporting by lobbying firms.

To enforce the new registration and compensation reporting requirements, new Joint Rule One will continue the administrative enforcement and appeals mechanisms currently in place for registration and expenditure reporting (automatic fines for late filed reports, one-time fine waiver for first offenders, appeal based on “unusual circumstances,” etc.), modified to conform to the requirements of SB 6-B (2005).

Administration of the new Joint Rule is assigned to the Office of Legislative Services.

Except for finalized fines and penalties due as of December 31, 2005, the new Joint Rule waives any obligations under the previous registration and expenditure reporting rules (former Joint Rule 1); the CS, however, makes the new registration requirements applicable retroactively to January 1, 2006.

This CS rescinds Joint Rule 1 of the Florida Legislature and adopts a new Joint Rule 1.

II. Present Situation:

In Special Session 2005-B, the Legislature enacted SB 6-B, effectively rewriting Florida's legislative lobbying registration and reporting system and making other changes in law. With the Governor's signature, that bill became law on January 1, 2006 (ch. 2005-359, Laws of Florida).

SB 6-B prohibited most lobbying expenditures made by a lobbyist or principal, and eliminated altogether the system of lobbyist expenditure reporting. Instead, the bill directed the Legislature to adopt rules requiring *lobbying firms*, specifically defined in the legislation, to regularly report the *compensation* they receive for representing each principal.

SB 6-B also made minor changes to the registration requirements, and added a requirement that each or both houses of the Legislature investigate potential violations of the compensation reporting system upon receipt of audit information indicating a possible violation. (The bill sets up a system of random compensation audits.)

To date, Joint Rule 1 has not been altered by the Legislature. This rule continues to require expenditure reporting and does not incorporate the new requirements in Senate Bill 6-B, many of which became effective on January 1, 2006.

III. Effect of Proposed Changes:

The CS formally rescinds Joint Rule 1 (Rules 1.1 – 1.9) and proposes a new Joint Rule One, bringing the Legislature's joint lobbyist registration and reporting rules into compliance with the statutory requirements in SB 6-B.

With respect to registration, lobbyists are no longer required to identify a "designated lobbyist" responsible for reporting expenditures on behalf of each principal. Also, each principal is required, on forms authorizing lobbyists, to identify the six-digit North American Industry Classification System (N.A.I.C.S.) code that most accurately describes its main business. Finally, the lobbyist registration forms are amended to solicit information from lobbyists about their affiliation with *lobbying firms*, for purposes of administering the compensation reporting requirements in the new law. Otherwise, fees and registration procedures remain basically unchanged.

The CS incorporates almost verbatim many of the statutory requirements in SB 6-B with respect to quarterly compensation reporting, amended to correct cross-references and clarify certain requirements in the new law.

The CS modifies the administrative automatic fines for late filing and appeals processes that have been utilized for expenditure reporting, and applies them to the new compensation reporting provisions as amended. It allows a lobbying firm to request a waiver from the filing requirement or to appeal a late-filing fine upon good cause shown, based on unusual circumstances. Because lobbying firms, as opposed to individual lobbyists, are the reporting entity, the CS provides for joint and several liability of each lobbyist for any late filing fine assessed against a lobbying firm in which they participate. The new Joint Rule also suspends all

registrations of lobbyist participants in a lobbying firm that fails to file a required report and timely pay or appeal a late-filing penalty, until the fine is paid or waived.

New Joint Rule 1.7 provides for records retention and inspection procedures governing records of lobbying firms and principals. It specifically provides that the Senate President or House Speaker may order inspection by a licensed attorney or accountant when necessary to process a complaint. It provides that the right of inspection may be enforced by appropriate writ issued by any court of competent jurisdiction. This carries forward comparable provisions found in former Joint Rule 1.9. It does not include language in s. 11.045(2)(e) (as amended by ch. 2005-359, Laws of Florida) that directs that the legislative rule authorize use of legislative subpoena. The constitution, other statutes, and Senate Rules already provide sufficient authority to subpoena the information in an appropriate investigation without including this specific authority in a joint rule.

New Joint Rule 1.9 in the CS provides that every fine and penalty finally due and owing on or before December 31, 2005 with no appeal pending under the former joint rules is ratified and preserved, and shall be collected as previously determined. The CS abolishes and waives every other obligation arising under former Joint Rule 1 governing lobbyist registration and expenditure reporting. For purposes of transitioning, the CS also makes new Joint Rules 1.1, 1.2, and 1.3 governing lobbyist registration retroactive to January 1, 2006; the CS provides, however, that substantial compliance with the former registration provisions of the Joint Rule shall be deemed compliance with the retroactive requirements in new Joint Rules 1.1, 1.2, and 1.3.

The CS revises other language found in the former Joint Rules 1.1-1.9 to provide greater clarity. It also incorporates language in the mandatory provisions of SB 6-B, modified as necessary for accuracy and clarity.

Rule-by-Rule Breakdown

The new Joint Rule One contains 9 separate new rules. The general subject of each rule is set out in a short title in each. A brief description of the source and subject matter of each rule is provided below. For a more full explanation of any changes noted, see the discussion above. References to “s. 11.045” in the discussion below relate to the amended version of s. 11.045, Florida Statutes, enacted in ch. 2005-359, Laws of Florida, effective January 1, 2006.

Joint Rule 1.1 mandates lobbyist registration to conform to the requirements in s. 11.045(2). It also provides definitions applicable to the entire Joint Rule One, consistent with the definitions provided in s. 11.045(1). The definitions include clarifications useful to the enforcement of the rules, including many definitions found in former Joint Rule 1.1. For example, the definition of “lobbying firm” provides that an entity (such as a corporation, association, or governmental entity) that employs a lobbyist but receives no compensation for lobbying from principals, or only receives lobbying compensation from a subsidiary corporation, is excluded from the definition (and thus excluded from compensation reporting requirements).

Joint Rule 1.2 provides the method of registration. It includes provisions that conform to requirements in s. 11.045(2) and carries over many administrative provisions found in former Joint Rule 1.2.

Joint Rule 1.3 provides for registration fees and adopts former Joint Rule 1.3.

Joint Rule 1.4 mandates reporting of lobbying firm compensation. It includes mandatory provisions found in s. 11.045(3)(a)-(d).

Joint Rule 1.5 provides for late-filing penalties and administration thereof. It includes mandatory provisions found in s. 11.045(3)(e). It carries forward many provisions contained in former Joint Rule 1.5 relating to late filing of expenditure reports.

Joint Rule 1.6 provides that registration and compensation reporting records of the Legislature are open records. This is consistent with present treatment of registration and expenditure reporting records under former Joint Rule 1.8.

Joint Rule 1.7 provides for records retention and inspection procedures governing records of lobbying firms and principals. It also includes inspection provisions. This carries forward comparable provisions found in former Joint Rule 1.9.

Joint Rule 1.8 provides for an informal opinion to be provided by the General Counsel of the Office of Legislative Services with respect to the interpretation and applicability of provisions of Joint Rule One to a specific situation. These opinions are subject to revision by an appropriate committee of either house. The rule also provides that a person may also seek an advisory opinion directly from either house. These provisions carry forward language found in former Joint Rule 1.7.

Joint Rule 1.9 provides for the transition from former Joint Rule 1 to the new rules by: preserving and ratifying fines and penalties finally due and owing as of December 31, 2005; abolishing all other obligations under the old rule; and, making the new registration provisions retroactive to January 1, 2006, the effective date of most provisions of SB 6-B.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The constitutionality of SB 6-B (2005) authorizing the new lobbying registration and reporting system is currently the subject of a lawsuit pending in Leon County Circuit Court. Florida Association of Professional Lobbyists, Inc. v. Division of Legislative Information Services, No. 2006 CA 000488 (Florida 2nd Judicial Circuit, Feb. 17, 2006).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The economic impact on private sector compliance with the new rules appears minimal. Any increase in the cost of record-keeping to comply with the new compensation reporting requirements should be offset by the corresponding elimination of record-keeping costs associated with expenditure reporting.

C. Government Sector Impact:

Revenues and expenditures relating to legislative lobbyist registration and reporting are allocated to/funded from the Legislative Lobbyist Registration Trust Fund, respectively, and do not affect general appropriations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Joint Rule includes the statutory requirement that each lobbying firm certify on quarterly compensation reports that its officers and employees have not made a lobbying expenditure in violation of the new ban in s. 11.045(4), F.S.. With the exception of this requirement, the Joint Rule does not directly address the expenditure ban.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
